UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MATTHEW BEATTIE, Plaintiff	)	
v.	)	Civil Action No. 10-30207-KPN
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, Defendant	)	

MEMORANDUM AND ORDER REGARDING PLAINTIFF'S MOTION TO CONDUCT DISCOVERY (Document No. 17)
June 8, 2011

NEIMAN, U.S.M.J.

Presently before the court, pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001-1461, is Matthew Beattie ("Plaintiff")'s motion for leave to conduct discovery from the Prudential Insurance Company of America ("Defendant"). Plaintiff seeks wide-ranging discovery based on the assertion that the case involves a "structural conflict of interest" in which the agency that reviews ERISA disability claims is also responsible for paying benefits. *See Metropolitan Life Ins. Co. v. Glenn*, 554 U.S. 105, 116 (2008). For the reasons which follow, the court will grant the motion, but in part only.

Background

It is undisputed that Plaintiff, while employed by Mestek, Inc., was covered by a long-term disability plan underwritten by Defendant. Plaintiff was injured during a

violent episode while withdrawing from Xanax. Defendant thereafter approved long-term disability benefits commencing December 16, 2006, but terminated those benefits as of September 1, 2008. The parties agree that a deferential standard of review applies in this case. They have also agreed upon a record for judicial review. They disagree, however, as to whether Plaintiff may be permitted additional discovery arising out of the structural conflict.

Discussion

The Supreme Court in *Glenn* instructed courts to take account of a conflict of interest "as a factor in determining the ultimate adequacy of the record's support for the agency's own factual conclusion." *Id.* at 119. The Court, however, gave scant guidance regarding discovery requests with regard to this issue. The First Circuit itself had previously directed that "some very good reason is needed to overcome the strong presumption that the record on review is limited to the record before the administrator." *Liston v. Unum Corp. Officer Severance Plan,* 330 F.3d 19, 23 (1st Cir. 2003). After *Glenn*, the First Circuit, in *Denmark v. Liberty Life Assur. Co. of Boston*, 566 F.3d 1, 10 (1st Cir. 2009) (hereinafter *Denmark III)*, expanded on this guidance but nonetheless stayed true to the "very good reason" standard in *Liston*:

> The majority opinion in *Glenn* fairly can be read as contemplating some discovery on the issue of whether a structural conflict has morphed into an actual conflict. That is consistent with the *Liston* paradigm. But any such discovery must be allowed sparingly and, if allowed at all, must be narrowly tailored so as to leave the substantive record essentially undisturbed.

Id. (citation omitted). For example, the First Circuit explained, "a good reason

has been found to exist when a party makes a colorable claim of bias." *Id.* *See also Parent v. Principal Life Ins. Co.,* - - F. Supp. 2d - -, 2011 WL 339218, at *4 (D.Mass. Feb. 3, 2011).

Given this guidance, the court believes that a plaintiff in an ERISA matter must assert something more than a structural conflict in order to obtain discovery. There must be at least some showing, whether gleaned from the administrative record or not, that the denial of benefits was influenced by the administrator's alleged conflict of interest, for example, the asserted lack of independence of a medical examiner when compared to convincing opinions of a claimant's treating physicians. *See McGahey v. Harvard University Flexible Benefits Plan*, 685 F. Supp. 2d 168, 179 (D.Mass. 2009); *see also McGahey v. Harvard University Flexible Benefits Plan*, 2009 WL 799464, at *2 (D. Mass. March 25, 2009) ("[I]n light of *Glenn*, this court will consider, among other factors, the extent to which the record discloses efforts to insulate the claims review process from institutional financial considerations; the thoroughness and consistency of the explanation of the denial; the care with which the claimant's own physician's opinions were treated; and, if the administrator relied on the opinion of independent experts, the extent to which these experts were in fact truly independent.").

Here, Plaintiff has offered nothing which approaches a "very good reason" cited in both *Liston* and *Denmark III*, other than the *absence* of evidence in the record. In essence, Plaintiff baldly asserts that the record is

devoid of any disclosure of efforts to insulate the claims review process from institutional financial considerations and of documents regarding the relationship between Defendant and the record reviewers, assertions which are strongly contested by Defendant. Plaintiff, however, has made no attempt to bring to the attention of the court any aspect of the record which can fairly be read to reflect any conflict of interest. That being so, the court concludes that Plaintiff is entitled to nothing more than Defendant's written policies and procedures, if any, which address (1) insulation of the claims review and evaluation process from financial considerations and (2) financial incentives offered to claims reviewers or others involved in the claim review process, as requested in Paragraph 2(B) and 2(C) of his motion. *See Denmark III*, 566 F.3d at 10 ("[P]lan administrators, aware of *Glenn*, can be expected as a matter of course to document the procedures used to prevent or mitigate the effect of structural conflicts."); *see also Kindelan v. Disability Management Alternatives, LLC.*, 706 F. Supp. 2d 210, 218 (D.R.I. 2009) (granting limited discovery to determine what, financial incentives there were, if any, for a third-party administrator to "slant" findings for the Defendant). In all other respects, Plaintiff's motion is denied.

Conclusion

Defendant shall produce such policies and procedures, if any, by June 24, 2011. Thereafter, as decided at the hearing on June 7, 2011, Plaintiff shall file his dispositive motion by August 12, 2011, and Defendant's

opposition and cross-motion shall be filed by September 2, 2011, to which Plaintiff may reply by September 16, 2011. A hearing on the cross-motions is scheduled for October 19, 2011, at 2:00 p.m. before District Judge Michael A. Ponsor.

IT IS SO ORDERED.

DATED: June 8, 2011

/s/ Kenneth P. Neiman
KENNETH P. NEIMAN
U.S. Magistrate Judge